

**Supplemental Letter of Findings: 04-20120368
Sales and Use Tax
For the Year 2012**

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ISSUE

I. Administration – Late Payment Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department abate sales/use tax and excise tax late payment penalties.

STATEMENT OF FACTS

Taxpayer purchased an airplane from a Nevada dealership. No sales tax was paid to Nevada at the time of the transaction. Taxpayer arranged for a Montana attorney to establish a Montana LLC to hold title to the airplane. The only members of the LLC are two individuals, a husband and wife, who reside in Indiana. The airplane is hangared in Indiana at least part of the time.

Pursuant to an audit investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer failed to properly register its aircraft as required by the Indiana law and failed to pay the aircraft license excise tax. The Department's audit investigation also determined that Taxpayer did not pay sales tax at the time of its purchase of the aircraft or self-assess and remit the use tax accordingly. As a result, the Department assessed Taxpayer the aircraft license excise tax, use tax, interest, and penalty.

Taxpayer disagreed with the proposed assessments and submitted a protest to that effect. An administrative hearing was held on Taxpayer's protest and, subsequently, a Letter of Findings # 04-20120368.LOF (the "LOF") was issued denying Taxpayer's protest of the assessment of use tax.

Taxpayer timely requested rehearing because its protest of late payment penalty was not addressed in the LOF. Taxpayer's request for rehearing was granted to address this omission. Additional facts will be provided as necessary.

I. Administration – Late Payment Negligence Penalty.

DISCUSSION

In its request for rehearing Taxpayer pointed to its disagreement with the base tax assessment as justification for its request to abate the penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;

- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer's rationale for requesting abatement of the penalty – its disagreement with the base assessment – is interpreted to mean that Taxpayer is arguing it followed the guidance of professionals in setting up the Montana LLC and therefore had "reasonable cause" to presume its arrangement comported with the requirements of the law. As the LOF explained, Taxpayer was entirely misguided in this presumption; however, Taxpayer has shown sufficient basis for a one-time abatement of the late payment negligence penalty.

FINDING

Taxpayer's request that the late payment negligence penalty be abated is sustained.

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